Civil Action: 07 CV 11527 (VM)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
GMA ACCESSORIES, INC.,

Plaintiff,

- against -

QUIKSILVER, INC., NORDSTROM, INC., SWELL, INC., and JILL STUART, INC.,

X

Defendants

DECLARATION OF JOHN P. BOSTANY IN REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS AND AFFIRMATIVE DEFENSES

John P. Bostany, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury, as follows:

- 1. I am a member of The Bostany Law Firm, attorney of record for Plaintiff, GMA Accessories, Inc. ("GMA"), in the above captioned matter, and respectfully make this Declaration based upon my review of the files in this firm's office.
- 2. On August 14 2007 this firm sent a cease and desist letter to the C.E.O of Defendant Quiksilver, Inc. ("Quiksilver"), asserting that Quiksilver infringed on GMA's CHARLOTTE mark and demanding that Quiksilver cease its infringement. A copy of this letter is attached as **Exhibit A**.
- 3. On August 21, 2007, Mitch Milstein, General Counsel for Quiksilver, replied to this firm, arguing that Quiksilver had not used the CHARLOTTE mark, and even if it did, there was no likelihood of confusion.
- 4. On August 31, 2007 this firm sent a detailed response to Mr. Milstein, confirming Mr. Milstein's representation that Quiksilver had stopped using CHARLOTTE. A copy of this letter is attached as **Exhibit B**.
- 5. Quiksilver did not respond and this firm continued to find evidence of Quiksilver's infringement. See e.g. **Exhibit C**. On September 20, 2007, this firm again urged Quiksilver to stop infringing; a copy of this letter is attached as **Exhibit D**.

- 6. Rather than cooperate, Mr. Milstein demanded, among other things, that we provide him with proof that the CHARLOTTE mark was in use by GMA; a copy of Mr. Milstein's letter is attached as Exhibit E. Apparently, he had not bothered to review the proof of use reflected in numerous filings to which he was referred in our correspondence. Hoping that we might avoid a lawsuit, which began to appear unavoidable, on October 16, 2007 we enclosed pictures of hats from GMA's showroom; the letter also reminded Quiksilver of its exposure to damages for continued infringement. A copy of this letter is attached as **Exhibit F**. During this fruitless exchange with Mr. Milstein, Quiksilver Charlotte hats and hooded fleece tops were prevalent in the market. See e.g. Exhibit G.
- On October 29, 2007, Mr. Milstein requested that this firm send him proof of 7. GMA's use of the CHARLOTTE mark in connection with each and every good identified in the many registrations that GMA holds regarding the CHARLOTTE mark. A copy of this letter is attached as Exhibit H.
- 8. During the December, 2007 holiday season, the hat and hoodie were sold all over the internet. See e.g. Exhibit I. See also Charlotte hats in Quiksilver's "Holiday 2007" product catalog, an excerpt of which is attached at Exhibit J and Charlotte hoodie in its "Sportswear Fall 2007" product catalog. See Exhibit K.
- GMA filed suit on December 26, 2007. Two days later, Quiksilver "urgently" 9. initiated efforts to stop infringing. See Exhibit L.
- 10. Copies of prior consent judgments obtained in litigation protecting the CHARLOTTE mark are attached as Exhibits M, N, O, P, Q, R.
- 11. GMA's policing of the CHARLOTTE mark dates back at least 6 years when it not only regularly sent cease and desist letters stopping companies from using the mark early, thereby avoiding litigation, but also initiated numerous proceedings in the Trademark Trial and Appeal Board successfully halting many would be users of the CHARLOTTE mark on similar goods.
- A copy of defendants' Rule 26(a)(1) disclosures is attached as **Exhibit S**. 12. Dated: New York, New York July 24, 2008

John P. Bostany	

THE BOSTANY LAW FIRM

40 WALL STREET

61st Floor

New York, New York 10005-1304

ONE GATEWAY CENTER NEWARK, NJ 07102

NEW JERSEY OFFICE

TEL: 212-530-4400

FAX: 212-530-4488

August 14, 2007

UPS AIR

Bob McKnight, C.E.O. Quiksilver, Inc. 15202 Graham Street Huntington Beach, California 92649

Re:

CHARLOTTE® Trademark Infringement

Dear Mr. McKnight:

We represent GMA Accessories, Inc., the owner of the registered trademark CHARLOTTE® in various classes including headgear. A copy of the current title and status of this registration is attached. It has come to our attention that your Roxy division is marketing and selling a hat named CHARLOTTE without permission from the trademark owner.

We demand that you immediately cease and desist all use of the CHARLOTTE® brand name. Provide me with certification within 7 days of your receipt of this letter that you have stopped purchasing, selling, marketing, advertising, distributing or transferring products bearing the CHARLOTTE® mark. Within 14 days of your receipt of this letter we demand that you provide us:

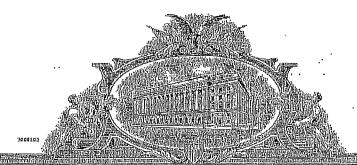
- a list of all items that you have purchased, advertised, and/or sold that in any way incorporate GMA's Charlotte® brand name;
- the quantity sold of each; the purchase and sale price; and your remaining inventory.

If you fail to comply we will be forced to enforce the trademark owner's rights in court.

Very truly yours,

Adrienne S. Raps

Enclosure



ANIODE OVINA DELOCAKA H DEMIJOREN ODISCORE

TO AND TO WILDER UNUSE PRUSHINGS SHAME CONTROL:
UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

May 17, 2007

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,535,454 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM February 05, 2002 SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

By Authority of the

Under Secretary of Commerce for Intellectual Property and Director of the United-States Patentand Trademark Office

Certifying Officer

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,535,454

United States Patent and Trademark Office

Registered Feb. 5, 2002

TRADEMARK PRINCIPAL REGISTER

CHARLOTTE

GMA ACCESSORIES, INC. (NEW YORK CORPORATION)
I EAST 33RD STREET, 9TH FLOOR
NEW YORK, NY 10016

FOR: CLOTHING, FOOTWBAR AND HEAD-GEAR, NAMELY HATS, SCARYES, GLOVES AND SOCKS, IN CLASS 25 (U.S. CLS. 22 AND 39). FIRST USE (1-15-1996; IN COMMERCE 11-15-1996. OWNER OF U.S. REG. NOS. 221,405 AND 2,217,341.

SER. NO. 75-857,222, FILED 11-24-1999.

ELLIOTT ROBINSON, EXAMINING ATTORNEY

Case 11527-VM-REE Am Document 52-2 Shipping Document	Filed 07/24/2008 DIMENSIONAL LARGE AIR RELEASE Prince Prince
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TEL: 212-530-4400

FAX: 212-530-4488

August 31, 2007

Mitch Milstein, Esq. General Counsel Global IP 15362 Graham Street Huntington Beach, CA 92649

Re: CHARLOTTE®

Dear Mr. Milstein:

This letter is in response to your letter of August 21, 2007.

GMA's registration to the CHARLOTTE trademark in Class 25, which includes, among other items, "clothing", has been deemed incontestable by the USPTO pursuant to Section 15 of the Lanham Act in the same class of goods trafficked as CHARLOTTE by Quicksilver, Inc. GMA's incontestable registration is "conclusive evidence" of GMA's exclusive right to the CHARLOTTE trademark on the goods listed in the registration. 15 U.S.C. §1115(b); *Gucci America, Inc. v. Exclusive Imports International*, 2007 WL 840128 at *3 (S.D.N.Y. 2007).

GMA uses CHARLOTTE on numerous types of accessories which are available on www.capellinewyork.com. Furthermore, even if there is a question as to whether or not GMA's products compete with your client's, the products are certainly related goods. "The Lanham Act extends trademark protection to related goods in order to guard against numerous evils in addition to restraints on the possible expansion of the senior user's market, including consumer confusion, tarnishment of the senior user's reputation, and unjust enrichment of the infringer." Mobil Oil Corp. v. Pegasus Petroleum Corp., 818 F.2d 254, 259 (2d Cir. 1987). See also, Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Company, 799 F.2d 867, 874 (2d Cir. 1986) (quoting Judge Learned Hand, "...unless the borrower's use is so foreign to the owner's as to insure against any identification of the two, it is unlawful." Yale Electric Corp. v. Robertson, 26 F.2d 972, 974 (2d Cir. 1928)). It is well established that one of the interests protected by the Lanham Act is a "senior user's interest in being able to enter a related field at some future time." Scarves by Vera, Inc. v. Todo Imports Ltd., 544 F.2d 1167, 1172 (2d Cir.1976); Horn's Inc. v. Sanofi Beaute, Inc., 963 F.Supp. 318, 325 (S.D.N.Y. 1997).

The Second Circuit has in many instances protected trademark owners' rights when their marks are used by others on related, but not directly competing, products. *Rosenthal v Ritelite* 986 F.Supp. 133, 140 (E.D.N.Y. 1997). *See also, Warner Bros., Inc. v. Gay Toys, Inc.*, 658 F.2d

76, 78-79 (2d Cir. 1981). These cases recognize that consumers do not always know all of the types of products manufactured by a particular company and can reasonably be expected to be confused about source or sponsorship when a mark from one product area appears in a related product area. Rosenthal v Ritelite, 986 F.Supp. at 140.

The addition of a company name to an incontestable trademark does not excuse the infringement. Home Shopping Club v. Charles of the Ritz Group, 820 F.Supp.763, 769 (S.D.N.Y. 1993) (concluding that the addition of defendant's name increases the misappropriation in that it could lead a consumer to believe that there is a connection between the products where none exists).

Thank you for your certification that Quicksilver, Inc. has stopped using CHARLOTTE. We understand that you sold 8,000 units and are optimistic that an amicable settlement can be reached and ask that you satisfy the remainder of the requests contained in my letter dated August 14, 2007 so that we may have a meaningful settlement discussion.

Very truly yours,

Adrienne S. Kosta (formerly Raps)

ORDER TRACKING

MY ACCOUNT

GUYS GIRLS GEAR ROOM ROOTS

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HOME



圆ROXY **ROXY CHARLOTTE HAT** YOU MI

Item#: RXG0302CHR

We're always horsing around, which is why we love this cute military cap that features a keyhole at back for your pony tail. Details also include a logo pin and logo screened



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September 20, 2007

Mitch Milstein, Esq. General Counsel Global IP 15362 Graham Street Huntington Beach, CA 92649

Re: CHARLOTTE®

Dear Mr. Milstein:

You have not replied to my August 31, 2007 letter and still have failed to supply the information I requested from you on August 14, 2007.

I called you as a courtesy and you asked me to supply you with proof of GMA's use of the CHARLOTTE mark. I invited you to review the documents filed by GMA in the SDNY proceeding under docket # 07 Civ. 3219 as well as the decision dated August 29, 2007, which is attached.

We are attempting to discuss a reasonable settlement with you without the need for a lawsuit. If we are forced to commence litigation, we will seek treble damages pursuant to 15 U.S.C. 1117(b) along with statutory damages pursuant to 1117(c).

Please comply with the demands contained in our letter of August 14, 2007 within 7 days.

Very truly yours,

Adrienne S. Kosta (formerly Raps)

15362 GRAHAM STREET, HUNTINGTON BEACH, CALIFORNIA 92649 TEL714 889 2200 FAX714 889 3700

9/26/2007

<u>VIA CERTIFIED MAIL</u> RETURN RECEIPT REQUESTED

Adrienne Kosta
The Bostany Law Firm
40 Wall Street
61st Floor
New York, New York 10005

Re: charlotte

Dear Ms. Kosta:

As we discussed on the phone, I would like to have evidence of your client's use of 'Charlotte'. In other words, your client has a registration for 'hats, scarves, gloves and socks'; do they have use of hats? If so, can you point me to evidence of such? I would appreciate it if you would answer these two questions for each of the goods in your client's registration. Contrary to what you told me, the order from the Southern District Court does not address my questions.

I assume that the information you are still waiting for from me is: the purchase and sale price of the hat in question. Frankly, we did not purchase those hats and the sale price of the hats will presumably vary. Can you please let me know why you need this information in light of our agreement to stop using 'Charlotte' as a style name?

Very truly yours,

Mitch Milstein

General Counsel Global IP

MNM/mt



THE BOSTANY LAW FIRM

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61st Floor

NEW JERSEY OFFICE

ONE GATEWAY CENTER NEWARK, NJ 07102

NEW YORK, NEW YORK 10005-1304

TEL: 212-530-4400

FAX: 212-530-4488

October 16, 2007

Mitch Milstein, Esq. Quicksilver, Inc. d/b/a Roxy General Counsel Global IP 15362 Graham Street Huntington Beach, CA 92649

Re: CHARLOTTE® - ROXY

Dear Mr. Milstein:

Pursuant to your request, enclosed are pictures of GMA's CHARLOTTE hats as you requested. We have requested your price points and cost of goods because damages are in order, where, as here a simple trademark search would have revealed GMA's CHARLOTTE trademark in various classes including clothing, hats, footwear, handbags, and others. Under the Lanham Act, federal registration of a trademark is deemed constructive notice of the registrant's claim of ownership of their trademark. 15 U.S.C. §1072; *Toyota Jidosha Kabushiki Kaisha v. Aliments Lexas Inc.*, 2004 WL 1304054 at * 8 (E.D.N.Y. 2004).

In determining a second user's intent, actual or constructive knowledge of the prior user's mark may indicate bad faith. *Paddington Corp.*, v. Attiki Importers & Distrib., 996 F.2d 577, 587 (2d Cir. 1993); Mobil Oil Corp. v. Pegasus Petroleum Corp., 818 F.2d 254, 258 (2d Cir. 1987). See also International Star v. Tommy Hilfiger, 80 F.3d 749, 753-754 (2d Cir. 1996) (a company cannot avoid a finding of knowledge by "covering their eyes and ears").

Moreover, there is recent authority authored by the Chief Judge of the Southern District which no longer requires a showing of bad faith. *Nike v. Top Brand, Co.*, 2005 WL 1654859 at * 10 (S.D.N.Y. 2005) ("a showing of bad faith or intentional misconduct" is no longer required to recover profits pursuant to the amendments of the Lanham Act).

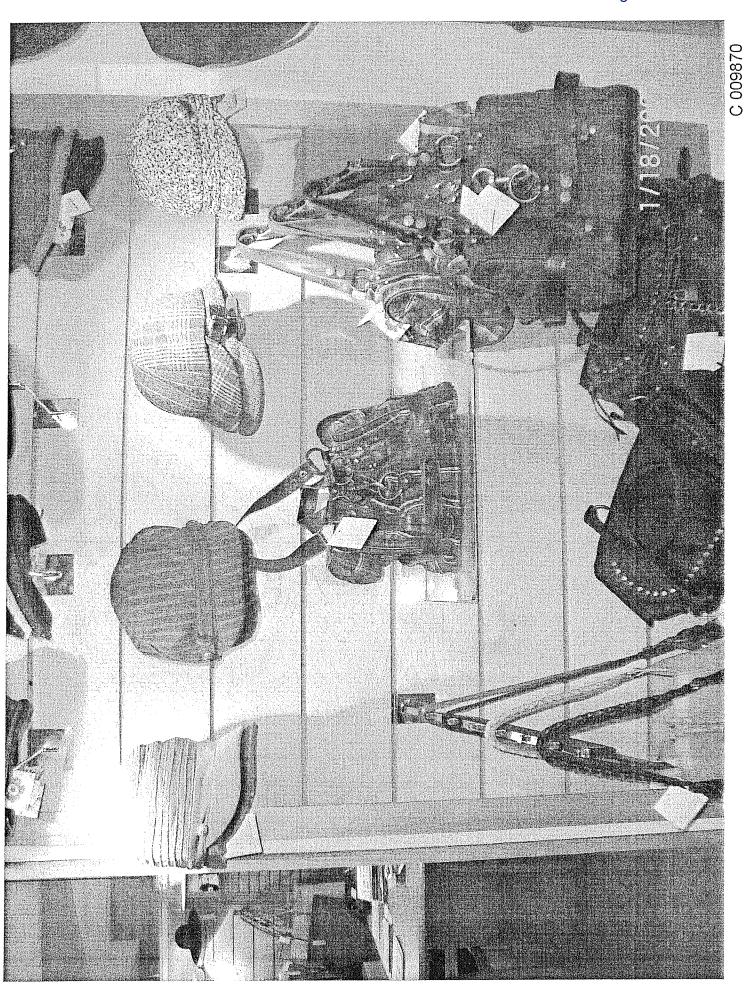
It is also significant that "the language of the statute indicates that absent extenuating circumstances, 'federal courts are expected, and not merely authorized' to grant treble profits or damages, whichever is greater, in cases of willful infringement." *Nike, Inc. v. Top Brand Co. Ltd.*, 2005 WL 1654859 at * 10 (S.D.N.Y. 2005) *quoting Fendi S.A.S. Di Paola Fendi E Sorelle v. Cosmetic World, Ltd.*, 642 F.Supp 1143, 1147 (S.D.N.Y. 1986).

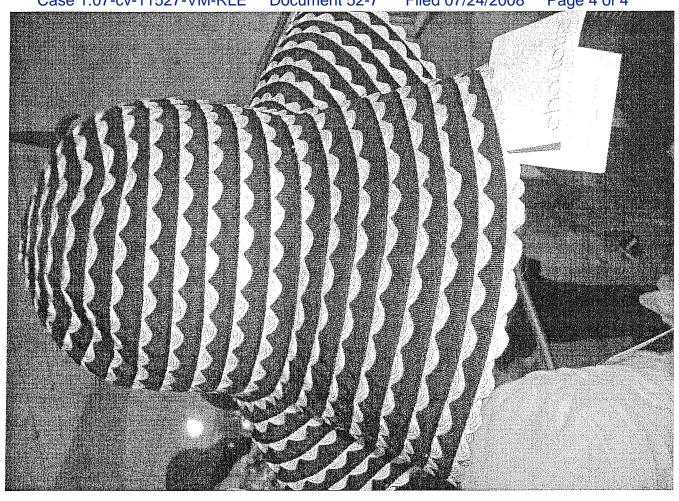
We are also cognizant of the strict scrutiny in the Second Circuit of deductions on gross revenue. In assessing profits the plaintiff is only required to prove defendant's sales because it is the defendant's burden to prove any cost or deduction claimed and it has failed to do so. *See Simon & Schuster, Inc. v. Dove Audio, Inc.*, 970 F. Supp. 279, 302 (S.D.N.Y. 1997); *New York Racing Association, Inc. v. Stroup News Agency, Corp.*, 920 F. Supp. 295, 300 (N.D.N.Y. 1996).

Please supply us your price points, cost of goods and quantity sold within 5 days so that we might have a settlement conversation before, rather than after, litigation is commenced that will be costly for both sides.

Very truly yours,

Andrew T. Sweeney







NORDSTROM

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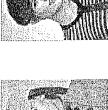
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Your search produced 2 items.



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Roxy 'Charlotte'
Military Cap
\$22.00 NEW

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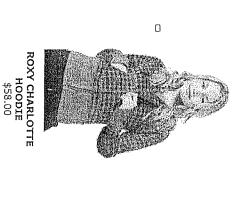
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10/29/2007

<u>VIA CERTIFIED MAIL</u> RETURN RECEIPT REQUESTED

Andrew Sweeney
The Bostany Law Firm
40 Wall Street
61st Floor
New York, New York 10005

Re: charlotte

Dear Mr. Sweeney:

As I pointed out in my previous letter, I am seeking evidence of use of Charlotte for each of your registered goods. So far, I only see alleged use of Charlotte in connection with a hat. As you know, your client has scarves, gloves, and socks registered too. Again, once I receive this information, I would be happy to discuss this issue further.

Very truly yours

Mitch Milstein

General Counsel Global IP

MNM/mt





roxy charlotte - Find, Compare, and Buy at DealTime

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Roxy Charlotte Hat > Winter Hats - Free Shipping & No Sales Tax





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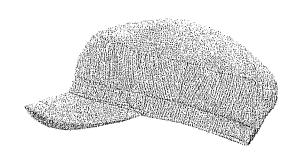
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Accessories Headwear Winter Hats

Roxy Charlotte Hat







Description Features Similar Items Reviews



Description of Roxy Charlotte Hat

As the leaves change color and fall arrives, the Roxy design team is creating styles for you to bundle up in. Invoking leggings, flirty dresses, soft sweaters and layered pants Roxy wants you to look stylish through the cold winter months.

Enjoy the comfort of your Roxy hat.

Browse a few of our featured brands & most popular products:

travel gear north face	backpacks mountain hardwear	rain jackets arcteryx	snowboards reef sandals	lib tech ride concept
dakine	north face denall	volcom	sleeping bags	marmot jackets
boardshorts	burton snowboards	hiking boots	ride snowboards	oakley sunglasses
snowboard bindings	armada skis	north face jacket	quiksilver boardshorts	skis

Purchase Item



PRODUCT:

Roxy Charlotte Hat

BRAND: Roxy

SKU:

449A08PK

PRICE:

s22.00

SIZE & COLOR:

COF, OS (\$22.00) Y

CHOOSE QUANTITY:

1 add to cart

- Usually ships out in 1-2 days
- Items can always be removed later
- Review Roxy Charlotte Hat
- (1) BOOKI-IARK * 12 AI

Top Selling Products

Arcteryx Brim Beanie Arcteryx Classic Beanie Arcteryx Covert Beanie Arcteryx Molly Hat Arcteryx Noily Hat
Arcteryx Norsenoggen Beanie
Arndae Big Logo Beanie
Coal The Dubai Beanie
Coal The Molita Hat - Women's
Coal The Randle Hat
Coal The Taylor Beanie
Coal The XL Beanie
Coal The XL Beanie
Electric The Collector New Era Hat
Mathx Groomer Hat
Mountain Hardwear Dome Perignon 03
Mountain Hardwear Hight Welght Wool Dome
Mountain Hardwear Nut Beret
Mountain Hardwear Nut Beret
Mountain Hardwear Power Stretch Beanie
Mountain Hardwear Mindstopper Micro Dome
Outdoor Research Alpine Hat**
Patagonia Lightweight Ski Hat roxy charlotte - Shopping.com

Page 1 of 2

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Clothing Computers Electronics Gift Cards At Home Health Kids See all P What are you shopping for? roxy charlotte Search Back to: Home > Clothing and Accessories > Clothing > "roxy charlotte" Clothing Sort by: Best match Showing: 30 per page 🔄 Calculate tax & shipping Holiday Picks Roxy - Charlotte Hoodie (Womens Formula One) \$58.00 Zappos.com Gift Cards J. J. J. J. J. J. P. FREE SHIPPING at Zappos.com Free Overnight Shipping - A little breezy outside? Then you better have this hoodle to keep you warm. Super cute houndstooth print with the Roxy® ... More at Zappos.com 12,276 store reviews See store info SEE IT Featured Rem Roxy Charlotte Women's Hooded Zip Sweatshirt -\$55.99 There are 6 items that matched your selection. amazon.com Formula One Red There are no additional ways to narrow down these results. (In stock) More at Amazon 3 2 1 may 200 may 1 SEE IT 1,508 store reviews See store info Or search these items Find Featured Item Roxy Charlotte Hoodie \$39.99 SWELL (In stock)
Totally over the jungle feline prints? We kinda are too, which is why This store is not yet rated Advarlisement SEE IT we wa're stoked to get this houndstooth print sweatshirt, featuring a drawstring... More at Swell Review this store See store info Featured Hea You live in more than one place, so you need a Roxy Charlotte Zip Hood Wakeside \$58.00 This store is not yet rated See store info FREE SHIPPING (In stock)
Zip hooded fleece with all over houndstooth print, 80/20 cotton/poly, wireless network at Walteside that works in 24" hps. More at Wakeside SEE IT BALTANTBIA. Featured Hear ROXY Charlotte Womens Hat - Coffee \$21,99 amazon com. BALTANTBIA (in stock) More at Amazon SEE IT 1,508 store reviews See store info Featured item ROXY CHARLOTTE HOODIE \$39.99 amazon.com. (In stock) More at Amazon SEE IT 1,508 store reviews See store info Showing 1 - 6 of 6 items Why are these stores listed? Back to ton Sponsored Listings [2]

rlotte - Shopping.com

Page 2 of 2

Roxy Gear at REI

Roxy Clothes, Gear & More. \$20 Off Orders of \$100 or Morel www.REI.com

Roxy - Official Site

Shop Online at our Brand New Site! Free Two-Day Shipping Over \$100.

Huge Volcom Selection

Hundreds of Volcom Styles Available Mossive Selection and Free Shipping www.klilerdana.com

Roxy Charlotte

Shop Online for Roxy Brand Girls' Apparel. Free Shipping & Returns. Zappos.com

Roxy Online

Roxy Clothes, Shoes, & Accessories. Get Your Surf Gear From Swell.com/ Swell.com/Roxy

Featured listings from

ABERCROMBIE ROXY CHARLOTTE RUSSE SHIRT LOT SZ LARGE LG Current bid: \$9.99 Auction ends: 2007-12-24 03:05:07 GMT #Big/ff/Now \$14.99 www.dbay.com

See eBay's 1 fixed price listing for "roxy charlotte"

See all eBay listings for "roxy charlotte"

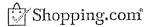
Prices are provided by the merchants. We assume no responsibility for accuracy of price information provided by merchants. Pleasa alert us to any pricing discrepancies and we will alert the merchant. Sales taxes and shipping costs are estimated based on the geographical location of your IP address. You may provide your Zip code above if you would like to improve the accuracy of the sales tax and shipping cost estimates. Please check store for exact shipping costs. To learn more about why certain stores are listed on the site, click here

Product specifications are obtained from third parties, and while we make every effort to assure the accuracy of product information, we do not assume any liability for inaccuracies. Store ratings and product reviews are written and submitted by online shoppers to assist you as you shop. They do not reflect our opinions. We take no responsibility for the content of ratings and reviews submitted by users.



What are you shopping for? roxy charlotte

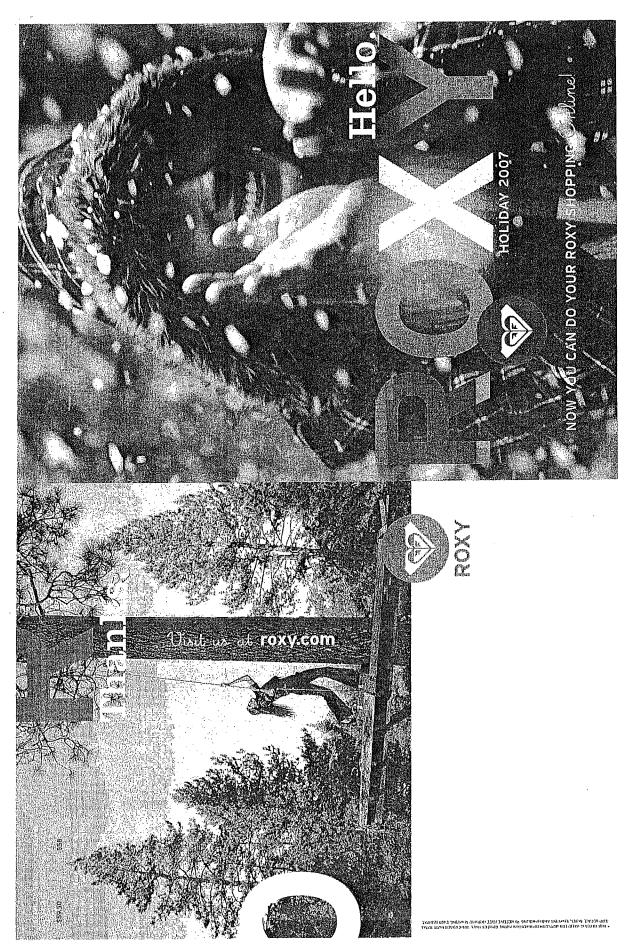


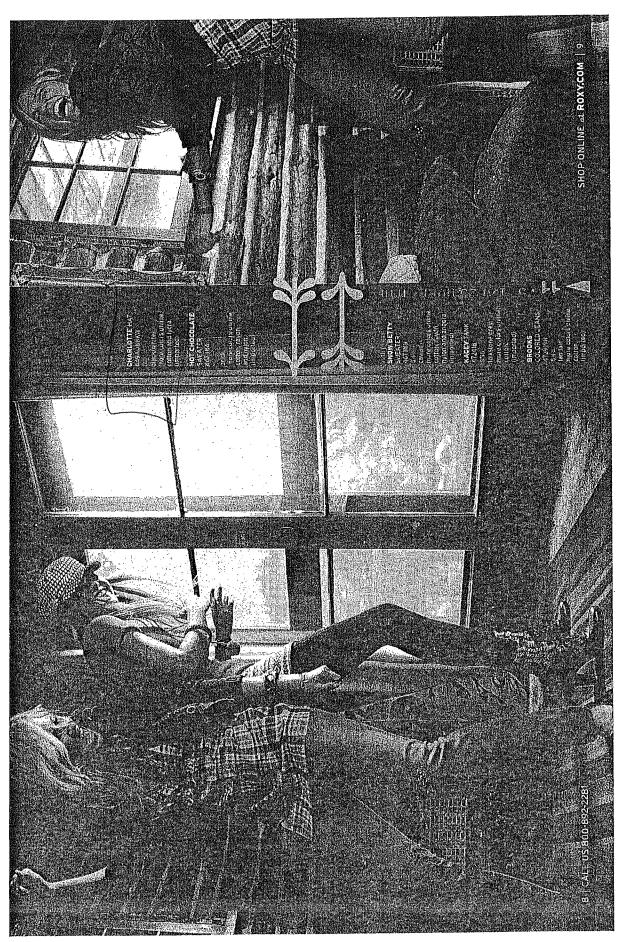


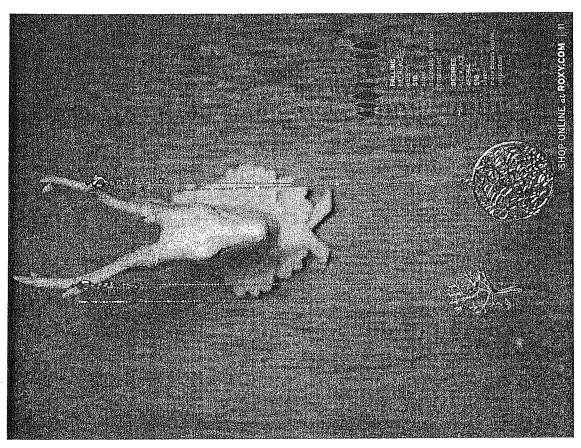
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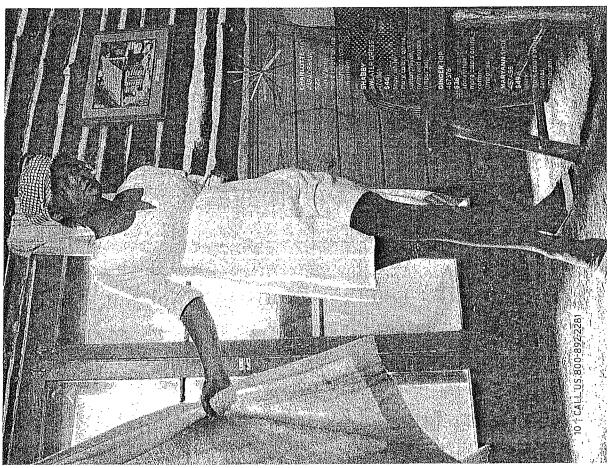
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active



J474776

showtime

l/s printed zip hoodle with logo embroidery, 80/20 cotton poly fleece all over printed, 240 gms 24" hps

WH	SL US	A (\$	28.00) M	SRP (JSA	(\$58.0)O)
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size	X5	S	m	[]	хI			
scale	1	1	2	2	1			
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						 	+	-

delivery date: 5|25 6|25 7|25

J474805 anthem plaid

l/s zip hoodie with all over printed plaid and logo embroidery 80/20 cotton poly fleece, 240 gms 24" hps

WHSL USA (\$28.00)	MSRP USA	(\$58.00)
WHSL CAN (\$35.00)	MSRP CAN	(\$72.00)
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size	XS	S	m		χl	 	
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delivery date: 5|25 6|25 7|25

J474752

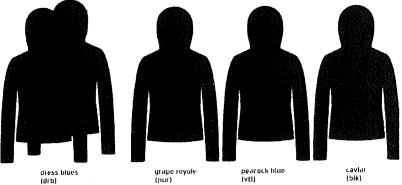
charlotte

I/s zip hooded fleece with houndstooth all over print 80/20 cotton poly fleece, 240 gms 24" hps

WHSL USA (\$28.00)) IM	SKP () DA	12201	,Ui	
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			<u> </u>			-	+	\vdash	

delivery date: 5|25 6|25 7|25









(36) ROXY

Re: Charlotte Hat - remove please

Page 2 of 3

From: Aaron Sullivan [mailto:SullivanA@gsicommerce.com]

Sent: Friday, December 28, 2007 10:44 AM

To: Mike Lund

Cc: Erin Shuman; Joel Stauffer; Lisa Skowrup Subject: Re: Charlotte Hat - remove please

Hi everyone,

We'll have it pulled mid-day.

Aaron

---- Original Message -----

From: Mike Lund < Mike.Lund@quiksilver.com>

To: Aaron Sullivan

Cc: Erin Shuman; Joel Stauffer; Lisa Skowrup <Lisa.Skowrup@quiksilver.com>

Sent: Fri Dec 28 13:41:54 2007 Subject: Charlotte Hat - remove please

Thought I'd ping Erin and Joel on this too: can we get a product removed from the Roxy site ASAP today please? See below for details.

From: Lisa Skowrup

Sent: Friday, December 28, 2007 10:30 AM To: 'Aaron Sullivan'; 'Cheryl Schwarb'

Subject: need to remove from the roxy site today

Importance: High

Hi Aaron and Cheryl,

I urgently need to hide 2817877, Charlotte Hat.

This needs to happen today.

I know how to do it, I just don't have catman access yet.

Thanks, Lisa

Ira S. Sacks
DREIER LLP
499 Park Avenue
New York, NY 10022
(212) 328-6100
Attorneys for Party-in-Interest
Sanei Charlotte Ronson, LLC

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

GMA ACCESSORIES, INC.,

Plaintiff,

v.

CHARLOTTE SOLNICKI, CHARLOTTE B, LLC,:
EMINENT, INC., SAKS FIFTH AVENUE, INC.,
INTERMIX, INC., WINK NYC, INC.,
LISA KLINE, INC., GIRLSHOP, INC.,
SHOWROOM SEVEN STUDIOS, INC.,
ELECTRIC WONDERLAND, INC.,
SHOWROOM SEVEN INT'L,
SHOWROOM SEVEN, JONATHAN SINGER,
GOSI ENTERPRISES, LTD., LEWIS TIERNEY,
TIERNEY DIRECT LLC and
JONATHAN SOLNICKI,

Defendants.

USDCS:
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DATE FILE
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07 CV 3219 (LTS)(DCF)

ORDER and JUDGMENT as to BOP, LLC

WHEREAS, plaintiff has accepted the offer of Judgment pursuant to Rule 68 as to BOP, LLC, (hereinafter "BOP") and for good cause shown,

IT IS hereby ORDERED, ADJUDGED and DECREED that a \$15,000 judgment be entered in favor of the plaintiff GMA Accessories, Inc. and against defendant BOP, LLC; and it is

FURTHER ORDERED and ADJUDGED that BOP is permanently enjoined from using

the mark CHARLOTTE or any marks similar to or substantially indistinguishable therefrom, including the mark CHARLOTTE SOLNICKI, in connection with the sale, purchase, offering for sale, display, transfer, marketing, advertising or distribution of unauthorized clothing or related merchandise; and it is

FURTHER ORDERED and ADJUDGED that, the foregoing notwithstanding, BOP is permitted to sell, purchase, offer for sale, display, transfer, market, advertise and distribute, merchandise using the CHARLOTTE RONSON marks going forward from the date hereof.

The Clerk is directed to enter/Judgment as to BOP accordingly, there being no just reason

(this Order and Amended

for delay.

Dated: New York, New York

June 4, 2008

SO ORDERED

Hon. Laura Taylor Swain United States District

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

GMA ACCESSORIES, INC.

Plaintiff.

ECTRONICAL DATE FILED: JUN

CONSENT JUDGMENT AS TO BELMONDO

Civil Action No.: 07CV3219 (LTS)

- against -

BOP, LLC, GIRLSHOP, INC., SHOWROOM SEVEN STUDIOS, INC., JONATHAN SOLNICKI, BELMONDO and EMINENT, INC.

Defendants.

WHEREAS, plaintiff has brought an action against BELMONDO, (hereinafter "BELMONDO") seeking a permanent injunction and damages for the claims contained in the amended complaint; on consent and for good cause shown,

IT IS hereby ORDERED, ADJUDGED and DECREED that BELMONDO, its owners. agents, employees and all those acting in concert or active participation with them are hereby permanently enjoined from the use of the word mark CHARLOTTE or any marks similar thereto or substantially indistinguishable therefrom, including CHARLOTTE SOLNICK!, in connection with the sale, purchase, transfer, marketing, advertising or distribution of any unauthorized goods. All other claims as to BELMONDO are dismissed with prejudice on consent. The Clerk is directed to enter Judgment as to BELMONDO accordingly, there being no just reason for delay.

Dated: New York, New York June . 2007

Noel W. Hausel

Attorney for Defendant Beimondo

270 Madison Avenue - 13th Floor New York, New York 10016

212-688-6400

Andrew T. Sweeney (AS Attorney for Plaintiff

The Bostany Law Firm

40 Wall Street, 61= Floor New York, NY 10005 (212) 530-4400

SO ORDERED

ura Taylor Swain

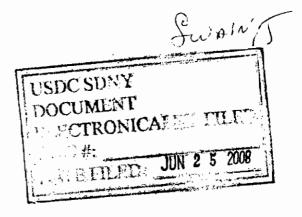
United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
-----X
GMA ACCESSORIES, INC.

Plaintiff,

- against -

CHARLOTTE SOLNICKI,
CHARLOTTE B, LLC, EMINENT, INC.,
SAKS FIFTH AVENUE, INC.,
INTERMIX, INC., WINK NYC, INC.,
LISA KLINE, INC., GIRLSHOP, INC.,
SHOWROOM SEVEN STUDIOS, INC.,
ELECTRIC WONDERLAND, INC.,
SHOWROOM SEVEN INT'L, SHOWROOM
SEVEN, JONATHAN SINGER, GOSI
ENTERPRISES, LTD., LEWIS TIERNEY,
TIERNEY DIRECT LLC and
JONATHAN SOLNICKI,



Civil Action No.: 07CV3219 (LTS)

CONSENT JUDGMENT as to GOSI ENTERPRISES, LTD. and JONATHAN SINGER

Defendants.

WHEREAS, plaintiff has brought an action against GOSI ENTERPRISES, LTD. and JONATHAN SINGER (hereinafter "GOSI Defendants") seeking a permanent injunction and damages for the claims contained in the third amended complaint, namely that Gosi, a clothing retailer of third party products offered for sale and sold third party clothing goods under the trademark CHARLOTTE SOLNICKI; and

WHEREAS, GMA and Gosi desire to settle the controversies between them, including but not limited to this Action, without any admissions of liability or infringement, on consent and for good cause shown,

IT IS hereby ORDERED, ADJUDGED and DECREED that GOSI ENTERPRISES,

LTD., its owners, agents, employees, and all those acting in concert or active participation with
the GOSI Defendants are hereby permanently enjoined from the use of the word mark

CHARLOTTE or any marks similar thereto or substantially indistinguishable therefrom, including CHARLOTTE SOLNICKI, in connection with the sale, purchase, transfer, marketing, advertising or distribution of any goods listed in any active federally-registered trademarks for the trademark "CHARLOTTE" owned by GMA.

Gosi Defendants shall pay GMA ten thousand dollars (\$10,000), by check made payable to "GMA Accessories, Inc." within five (5) business days after receipt by Gosi's counsel from counsel for GMA of notice that this Consent Judgment has been entered by the Court.

All other claims as to the Gosi Defendants are dismissed with prejudice on consent, with each party to bear its own fees and costs.

The Clerk is directed to enter Judgment as to GOSI ENTERPRISES, LTD. and JONATHAN SINGER accordingly, there being no just reason for delay.

Dated: New York, New York June , 2008

Consented to:

(personally and for Gosi-Enterprises, Ltd.)

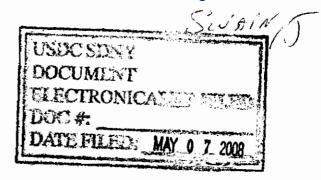
SO ORDERED:

United States District Judge

Plaintiff,

- against -

CHARLOTTE SOLNICKI,
CHARLOTTE B, LLC, EMINENT, INC.,
SAKS FIFTH AVENUE, INC.,
INTERMIX, INC., WINK NYC, INC.,
LISA KLINE, INC., GIRLSHOP, INC.,
SHOWROOM SEVEN STUDIOS, INC.,
ELECTRIC WONDERLAND, INC.,
SHOWROOM SEVEN INT'L, SHOWROOM
SEVEN, JONATHAN SINGER, GOSI
ENTERPRISES, LTD., LEWIS TIERNEY,
TIERNEY DIRECT LLC and
JONATHAN SOLNICKI,



Civil Action No.: 07CV3219 (LTS)

CONSENT JUDGMENT as to TIERNEY DIRECT LLC and LEWIS TIERNEY

Defendants.

WHEREAS, plaintiff has brought an action against TIERNEY DIRECT LLC and LEWIS
TIERNEY (hereinafter "TIERNEY Defendants") seeking a permanent injunction and damages
for the claims contained in the third amended complaint; on consent and for good cause shown,

IT IS hereby ORDERED, ADJUDGED and DECREED that TIERNEY DIRECT LLC, its owners, agents, employees, and all those acting in concert or active participation with the TIERNEY Defendants are hereby permanently enjoined from the use of the word mark CHARLOTTE or any marks similar thereto or substantially indistinguishable therefrom, including CHARLOTTE SOLNICKI, in connection with the sale, purchase, transfer, marketing, advertising or distribution of any goods listed in any active federally-registered trademarks for the trademark "CHARLOTTE" owned by GMA.

All other claims as to the TIERNEY defendants are dismissed with prejudice on consent.

05/01/2008 07:31 FAX

DREIER LLP MAIN FAX

Ø10002/0002

May-01 2008 08:29 AM American Express 212-640-8985

2/2

The Clerk is directed to enter Judgment as to TIERNEY DIRECT LLC and LEWIS

TIERNEY accordingly, there being no just reason for delay.

Dated: New York, New York April 30, 2008

John P. Bostany

The Bostany Law Firm 40 Wall Street, 61" Floor

New York, New York 10005

Attorneys for Plaintiff GMA Accessories, Inc.

Consented to;

Lewis Tierney

(personally and for Tlerney Direct LLC)

5 00

SO QRDERED:

Hos. Laura Taylor Swain United States District Judge

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MAY 1 2 2008

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
-----X
GMA ACCESSORIES, INC.

Plaintiff,

- against -

JONATHAN SOLNICKI,

CHARLOTTE SOLNICKI,
CHARLOTTE B, LLC, EMINENT, INC.,
SAKS FIFTH AVENUE, INC.,
INTERMIX, INC., WINK NYC, INC.,
LISA KLINE, INC., GIRLSHOP, INC.,
SHOWROOM SEVEN STUDIOS, INC.,
ELECTRIC WONDERLAND, INC.,
SHOWROOM SEVEN INT'L, SHOWROOM
SEVEN, JONATHAN SINGER, GOSI
ENTERPRISES, LTD., LEWIS TIERNEY,
TIERNEY DIRECT LLC and

Civil Action No.: 07CV3219 (LTS)

CONSENT JUDGMENT as to CERTAIN RETAIL DEFENDANTS

Defendants.

WHEREAS, Plaintiff has brought an action against EMINENT, INC., SAKS FIFTH AVENUE, INC., INTERMIX, INC., WINK NYC, INC. and LISA KLINE, INC. (the "Settling Retail Defendants", and collectively with Plaintiff, the "Parties"), seeking a permanent injunction and damages for the claims contained in the third amended complaint; and

WHEREAS, the Parties have entered into a Settlement Agreement to resolve their differences,

On consent and for good cause shown,

IT IS hereby ORDERED, ADJUDGED and DECREED that EMINENT, INC., SAKS FIFTH AVENUE, INC., INTERMIX, INC., WINK NYC, INC. and LISA KLINE, INC., and each of its owners, agents, employees, and all those acting in concert or active participation with them are hereby permanently enjoined from the use of CHARLOTTE as a stand alone trademark

or CHARLOTTE SOLNICKI, in connection with the sale, purchase, offering for sale, display, transfer, marketing, advertising or distribution of any products or services listed in any currentlyactive federally-registered trademarks for the trademark "CHARLOTTE" owned by GMA.

All other claims by or against the Settling Retail Defendants are dismissed with prejudice on consent.

The Clerk is directed to enter Judgment as to EMINENT, INC., SAKS FIFTH AVENUE, INC., INTERMIX, INC., WINK NYC, INC. and LISA KLINE, INC. accordingly, there being no just reason for delay.

Dated: New York, New York

John P. Bostany The Bostany Law Firm 40 Wall Street, 61st Floor New York, New York 10005

212 530-4400

Attorneys for Plaintiff GMA Accessories, Inc.

Ira S, Sacks

Dreier LLP 499 Park Ave.

New York, New York 10022

212 328 6100

Attorneys for the Settling Retail

Defendants

SO QRDERED:

United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	37	
GMA ACCESSORIES, INC.,	- X :	
Plaintiff,	:	
- against -	:	CONSENT JUDGMENT
CROSCILL, INC., LINENS N' THINGS, INC., BED BATH & BEYOND INC. and	; ;	06 CV 06236 (GEL)(JCF)
BURLINGTON COAT FACTORY WAREHOUSE CORPORATION,	:	
Defendants.	: :	
	: X	

UPON CONSENT OF ALL PARTIES HERETO, it is hereby

ORDERED, ADJUDGED AND DECREED that defendant CROSCILL, INC. is enjoined from using the word "Charlotte" in connection with the advertising or sale of any products, and it is further

ORDERED, ADJUDGED AND DECREED that this action as to CROSCILL, INC., BED BATH & BEYOND, INC. and BURLINGTON COAT FACTORY WAREHOUSE CORPORATION is otherwise dismissed with prejudice and the action as to LINENS N THINGS, INC. is stayed due to its Bankrupcy proceeding.

> MOSES & SINGER LLP Attorneys for Defendants

> > David Rabinowitz

The Chrysler Building 405 Lexington Avenue

New York, New York 10174-1299

(212) 554-7800

THE BOSTANY LAW FIRM Attorneys for Plaintiff

The Trump Building 40 Wall Street

New York, New York 10005

(212) 530-4400

SO ORDERED:

U.S.D.J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

GMA ACCESSORIES, INC.,

Plaintiff,

-against-

QUIKSILVER, INC., NORDSTROM, INC., SWELL, INC., JILL STUART, INC., and GURU DENIM, INC.

Defendants.

Case No. 07 CV 11527 (VM)(RLE)

DEFENDANT-COUNTERCLAIM PLAINTIFFS' INITIAL DISCLOSURES REGARDING AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendant-Counterclaim Plaintiffs Quiksilver, Inc., Nordstrom, Inc. and Swell, Inc. (collectively, "Defendant-Counterclaim Plaintiffs") make the following initial disclosures regarding their affirmative defenses and counterclaims to Plaintiff-Counterclaim Defendant GMA Accessories, Inc. ("GMA"). The disclosures below represent information, documents, and things reasonably available to Defendant-Counterclaim Plaintiffs at this time. Defendant-Counterclaim Plaintiffs reserve the right to supplement or amend these disclosures as information becomes available pursuant to Rule 26 of the Federal Rules of Civil Procedure.

A. Rule 26(a)(1)(A)(i) – Individuals

Defendant-Counterclaim Plaintiffs hereby identify the name, address, and telephone number of the following individuals who are likely to have discoverable information that they may use to support their counterclaims, unless solely for impeachment, and identifies the subjects of that information:

John P. Bostany, Esq. The Bostany Law Firm 61st Floor 40 Wall Street New York, NY 10005 Tel: (212) 530-4400 Misuse of "Charlotte." Sworn statements made to USPTO. George Altirs President GMA Accessories, Inc. 1 East 33rd Street New York, NY 10016 Tel: (212) 684-3344 Misuse of "Charlotte." Sworn statements made to USPTO. Use of "Charlotte."

William Maloof GMA Accessories, Inc. 1 East 33rd Street New York, NY 10016 Tel: (212) 684-3344 Sales of GMA "Charlotte" products

In addition, Defendant-Counterclaim Plaintiffs identify all persons that may be named or referred to in documents produced in the course of discovery, all persons that may be named in responses to interrogatories, and all persons that may be named during depositions.

Document 52-20

B. Rule 26(a)(1)(A)(ii) - Documents, Data Compilations, and Tangible Things

Defendant-Counterclaim Plaintiffs hereby describe the category and location of documents, data compilations, and tangible things that are in their possession, custody or control and that they may use to support their counterclaims, unless solely for impeachment: (1) documents filed by GMA in support of its "Charlotte" Registrations; (2) documents filed in connection with GMA's numerous litigations before the Federal Courts and the Trademark Trial and Appeal Board regarding "Charlotte," Defendant-Counterclaim Plaintiffs reserve the right to use documents and things to be produced by GMA in support of their counterclaims.

C. Rule 26(a)(1)(A)(iii) - Damages

To be determined at trial, including Defendant-Counterclaim Plaintiffs' attorneys fees and costs.

D. Rule 26(a)(1)(A)(iv) - Insurance

Defendant-Counterclaim Plaintiffs are unaware of any insurance policy held by GMA which might satisfy a judgment against it.

Defendant-Counterclaim Plaintiffs hereby reserve the right to amend and/or supplement the foregoing initial disclosures.

Dated: July 10, 2008

Stephen W. Feingold

Barry M. Benjamin Mark S. Morgan

DAY PITNEY LLP

7 Times Square

New York, NY 10036-7311

Phone: (212) 297-5800 Fax: (212) 916-2940

Attorneys for Defendant Quiksilver, Inc.

Mark J. Rosenberg

SILLS CUMMIS & GROSS P.C.

One Rockefeller Plaza

New York, New York 10020

Phone: (212) 643-7000 Fax: (212) 643-6500

Attorneys for Defendant Nordstrom, Inc. and Swell, Inc.